

I hereby certify that this correspondence is being sent via facsimile to 1-703-892-9306 to Examiner Charles H. Sam at the United States Patent & Trademark Office, addressed to:

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

on JUNE 30, 2005  
Date of Deposit

**David W. Okey**

Name of applicant, assignee or  
Registered Representative

**Signature**

Signature  
JUNE 30, 2005  
Date of Signature

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Our Case No. 10922/51

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re Application of:**

Thomas L. Foster et al.

**Serial No. 10/617,580**

**Filing Date: July 11, 2003**

**For: FLEXIBLE CANNULA**

**Examiner** Charles H. Sam

Group Art Unit No. 3731

**STATEMENT OF PRIOR INVENTION  
UNDER 37 C.F.R. § 1.131**

**Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Dear Sir:

We, the undersigned, with addresses and citizenship as stated below, declare of our own knowledge:

Appl. 10/617,580

Attorney Docket 10922/51

1. We declare that we made and conceived the invention described and claimed in United States Patent Application Number 10/617,580, filed in the United States of America on July 11, 2003, entitled FLEXIBLE CANNULA.

2. We declare that we made and conceived this invention while employed by Cook Urological Incorporated (Cook); that the invention is related to the work we are employed to perform, and the invention was made within the scope of our employment duties. The invention was made and conceived by us prior to March 8, 2002, as disclosed in an invention disclosure consisting of four pages of drawings which are dated prior to March 8, 2002. The invention was made and conceived by us prior to March 8, 2002, as disclosed in four pages of drawings. In addition, the drawings were faxed to a patent attorney at Cook Legal on a date prior to March 8, 2002. The facsimile cover sheet is dated prior to March 8, 2002, and the header notation of the cover sheet and all four sheets of drawings indicates a transmission date prior to March 8, 2002.

We further declare that our work concerned a flexible cannula for use in a grasper or laser grasper, or other instrument for use in minimally-invasive surgery. The invention was developed in order to provide a surgeon with a more flexible cannula when removing small objects from a patient during surgery. We believe that our invention can be used to allow the surgeon greater ability to maneuver a grasper during surgery, and thus greater freedom of movement when removing small objects. In addition, the flexible cannula may be used for other surgical purposes. For instance, it may be used with other devices to spear and cut objects for removal, such as for a biopsy.

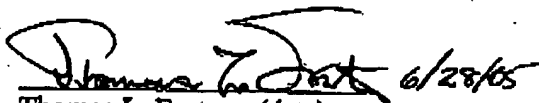
3. As depicted in the drawings, made before March 8, 2002, spiral cuts are made along the length of the cannula to make the cannula flexible. The spiral cuts are made at an angle to the longitudinal axis of the cannula, and may be made at about 80° or at other angles to the axis of the cannula. As depicted in p. 3 of the facsimile, the tubing has a wall thickness of about 0.004 inches  $((.035-.0263)/2 = 0.00435)$ . As also depicted in p. 3, the spiral cuts are preferably about 0.001 to 0.002 inches deep on the outside of the tubing of which the cannula is made. In our design, the spiral cuts make the cannula flexible, but the cuts are not so deep as to compromise structural soundness for its intended purpose. The drawings and facsimile cover sheet also show that the preferred materials for the cannula are Nitinol or stainless steel tubing.

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4. We declare that the invention was made during working hours and with the use of facilities, equipment, materials, funds, information and services of Cook Urological Incorporated at Spencer, Indiana.

5. We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Thomas L. Foster (date)  
10101 Buckskin Road  
Poland, IN 47868

  
Frederick L. Roemer (date)  
4406 W. Tanglewood Drive  
Bloomington, IN 47404

Attachment: Redacted Facsimile Cover Sheet and Drawings